

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EVELIN HORNEMANN, MARTIN EBNER,
and PETER KOLB

Appeal No. 1999-1486
Application 08/670,806

ON BRIEF

Before COHEN, ABRAMS, and PATE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 3, 7, 9, and 11 through 17, all of the claims remaining in the application. However, on page 6 of the answer (Paper No. 17), the examiner expressly withdrew the respective rejections of claim 11 and claims 13, 16, and 17. The examiner indicates

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(answer, page 1) that as to these latter claims, they are now objected to as being dependent on rejected claims, but would be allowable if rewritten to include all of the limitations of the claims from which they depend. It follows that only the rejection of claims 3, 7, 9, 12, 14, and 15 remains for our review on appeal.

Appellants' invention pertains to a locking arrangement for a hood of a motor vehicle. A basic understanding of the invention can be derived from a reading of exemplary claims 7 and 15, copies of which appear in "APPENDIX A" of the revised brief (Paper No. 16).

As evidence of obviousness, the examiner has applied the documents listed below:

Claud-Mantle	2,333,466	Nov. 2,
1943		
Poe et al. (Poe)	4,530,529	Jul. 23,
1985		

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The following rejection is the sole rejection before us for review.

Claims 3, 7, 9, 12, 14, and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Claud-Mantle in view of Poe.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the final rejection and answer (Paper Nos. 15 and 17), while the complete statement of appellants' argument can be found in the revised brief (Paper No. 16).

Appellants indicate that claims 7 and 15 do not stand or fall together, and that claims 3, 9, 12, and 14 may be grouped with claim 7 (revised brief, page 5). Accordingly, we shall assess claims 7 and 15 separately, infra, and claims 3, 9, 12, and 14 shall stand or fall with claim 7.

OPINION

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In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellants' specification and claims 7 and 15, the applied patents,¹ and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determination which follows.

We affirm the rejection of claims 7 and 15. It follows that we also affirm the rejection of claims 3, 9, 12, and 14 since these claims stand or fall with claim 7, as previously indicated.

Claim 7 is drawn to a locking arrangement "for a hood of a motor vehicle," without the inclusion of a hood or motor vehicle components, i.e., claim 7 addresses a locking

¹ In our evaluation of the references, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

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arrangement per se. Claim 17, on the other hand, is also drawn to a locking arrangement "for a hood of a motor vehicle," but expressly includes a hood and a stationary vehicle body part. Each of these claims includes corresponding first lock parts comprising, inter alia, a catch bow, a spindle fixed to the catch bow and having an external thread, an adjusting bush having an internal thread, and a base plate, with the adjusting bush being rotatably connected about an axis of rotation to the base plate and being fixed along the axis, and with the external thread of the spindle being engaged with the internal thread of the adjusting bush such that rotation of the adjusting bush moves the spindle along the axis.

The examiner's rejection under 35 U.S.C. § 103 is founded upon the combined teachings of the respective Claud-Mantle and Poe documents.

A threshold issue before us is the appropriateness of the prior art Poe teaching in the examiner's obviousness rejection.

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Prior art relevant to an obviousness determination encompasses not only the field of an inventor's endeavor but also any analogous arts. See Heidelberg Druckmaschinen AG v. Hantscho Commercial Products Inc., 21 F.3d 1068, 1071, 30 USPQ2d 1377, 1379 (Fed. Cir. 1994). The test of whether a reference is from a nonanalogous art is first, whether it is within the field of the inventor's endeavor, and second, if it is not, whether it is reasonably pertinent to the particular problem with which the inventor was involved. See In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). A reference is reasonably pertinent if, even though it may be in a different field of endeavor, it is one which because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. See In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1061 (Fed. Cir. 1992).

Appellants argue that the Poe reference is non-analogous prior art (revised brief, pages 7 through 10). We disagree.

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In our opinion, appellants have an overly narrow perspective of the second prong of the two-part test for determining whether a reference document is analogous or non-analogous prior art. More specifically, appellants argue in the revised brief (page 9) that they have addressed and solved the problem of providing a simplified, easily adjustable locking arrangement for a motor vehicle hood, while Poe is directed to the problem of adjusting the tension of an externally adjustable latch assembly for receiving flush mounted hinged or removable panels on aircraft. We, however, perceive from the background section of the present application (pages 1 and 2) that, at the time of the present invention, it was known to adjust the height of a locking top part relative to an engine hood, and that appellants sought to overcome problems with a known adjuster (several adjusting plates). Thus, as we see it, the problem faced by appellants was to find a simpler, alternative adjuster configuration that did not have a problem (high time expenditure) attendant to the known adjuster.² With the above in mind, it is apparent

² In the specification (page 2), appellants specify that an object of the invention is

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to us that the Poe document would have been highly relevant for its teaching of an alternative adjuster configuration in addressing the adjustment problem faced by appellants. Appellants focus upon the aircraft use by Poe, supra, in considering the second part of the two-part test, reveals to us that, in effect, appellants are inappropriately viewing the second part of the test as if it were the first part of the test, which it is not. For the above reasons, we conclude that the Poe teaching logically would have commended itself to an inventor's attention in considering the aforementioned adjustment problem. Thus, while Poe may not be in appellants' particular field of endeavor, i.e., a locking arrangement for the hood of a motor vehicle, like the examiner (answer, page 4), we appreciate the teaching of Poe as reasonably pertinent to the problem with which appellants were faced and, therefore, conclude that it is analogous prior art.

to provide a locking arrangement of the type generally described above by means of which the movable vehicle body part can be adjusted in a *simple* manner and at *low time expenditures* with respect to the stationary vehicle part. (italics added for emphasis)

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We turn now to the examiner's rejection under 35 U.S.C.
§ 103.

In applying the test for obviousness,³ this panel of the board determines that it would have been obvious to one having ordinary skill in the art, from a collective assessment of the teachings of Claud-Mantle and Poe, to replace the threaded keeper or hood latch adjuster 24 (30, 31, 32) in the vehicle environment of Claud-Mantle (Fig. 1) with a known threaded latch adjuster configuration as taught by Poe. From our perspective, one having ordinary skill in the art would have clearly been motivated to make the aforementioned replacement to gain the expected and self-evident benefits⁴ of the alternative, threaded latch adjuster configuration described

³ The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

⁴ In our opinion, Poe can fairly be said to inform those versed in the art that the disclosed latch adjuster is a *time-saver* since the patentee expressly seeks to overcome an earlier adjustment arrangement that was *time consuming* (column 1, lines 14 through 17). (*italics added for emphasis*)

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by Poe.

We, of course, have fully taken into account the arguments advanced by appellants in the revised brief (pages 10 through 13) as regards the obviousness rejection. However, for the reasons articulated below, we have not been persuaded thereby. Appellants' request for clarification of the examiner's rejection in the revised brief (page 10) appears to us to be not only an untimely presentation on appeal, but also one that is misdirected since appropriately the request should have been made of the examiner, after the final rejection was received, and prior to appeal. It does, however, appear to us from appellants' subsequent discussion in the revised brief that they do fairly understand the applied prior art and the manner that the references are applied by the examiner. As we see it, one having ordinary skill in the art would have readily comprehended the respective disclosures of the applied references and have been able to substitute a threaded adjuster configuration of the type taught by Poe for the threaded keeper of Claud-Mantle. Consistent with the view of the examiner (answer, pages 4 and 5), and contrary to the view

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of appellants, we have concluded, supra, that one of ordinary skill in the art would have derived a suggestion from and been motivated by a consideration of the combined teachings of the applied prior art to effect the proposed modification. As explained above, the reference teachings themselves would have been suggestive of their combination. As to the comment by appellants (revised brief, page 11) that Claud-Mantle "does not disclose or suggest adjusting the keeper 24 along the axis of the threaded shank 30," it is our opinion that the overall threaded keeper arrangement of this reference would have readily been understood by one having ordinary skill in the art as evidencing an adjustable keeper configuration, adjustable along its axis. For the reasons stated above, we are in accord with the examiner's viewpoint (answer, pages 5 and 6) that, in the present instance, the combination of applied teachings is not an impermissible hindsight reconstruction, as argued.

In summary, this panel of the board has affirmed the rejection of claims 3, 7, 9, 12, 14, and 15 under 35 U.S.C. § 103 as being unpatentable over Claud-Mantle in view of Poe.

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The decision of the examiner is affirmed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN)	
Administrative Patent Judge))
)	
)	
)	BOARD OF PATENT
NEAL E. ABRAMS))
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
WILLIAM F. PATE, III)	
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